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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 JESSIE L. SIMS,

7 Plaintiff,

8 v.

9 DAVID STANTON, ET AL.,

10 Defendants.

Case No. 2:19-cv-00833-JAD-DJA

ORDER

11 This matter is before the Court on Plaintiff Jessie L. Sims' Second Motion/Application
12 for Leave to Proceed *in forma pauperis* (ECF No. 6) and Motion for Relief (ECF No. 7), filed on
13 March 3, 2020.

14 **I. In Forma Pauperis Application**

15 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 6). Plaintiff has shown an
16 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*
17 *forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further
18 **INSTRUCTED** to file the complaint (ECF No. 1-1) on the docket. The Court will now review
19 Plaintiff's complaint.

20 **II. Screening the Complaint**

21 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
22 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
23 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
24 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
25 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
26 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
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1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
4 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
5 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th
6 Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
7 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands
9 “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
10 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
11 The court must accept as true all well-pled factual allegations contained in the complaint, but the
12 same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
13 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.
14 Secondly, where the claims in the complaint have not crossed the line from conceivable to
15 plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se*
16 complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v.*
17 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings
18 is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C.
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
23 federal law creates the cause of action or where the vindication of a right under state law necessarily
24 turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086,
25 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the “well-pleaded
26 complaint rule,” which provides that “federal jurisdiction exists only when a federal question is
27 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*,
28 482 U.S. 386, 392 (1987).

1 In this case, Plaintiff appears to allege that he was falsely arrested as a juvenile in California
2 and the files regarding his arrest were destroyed in 1994. He claims that defendants obtained those
3 files in 2016 or 2017 and thereafter, he was subject to false imprisonment. To the extent that
4 Plaintiff attempts to bring a claim under 42 U.S.C. § 1983, he fails to state a claim for relief.

5 42 U.S.C. § 1983 creates a path for the private enforcement of substantive rights created
6 by the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). To
7 the extent that Plaintiff is seeking to state a claim under § 1983, a plaintiff “must allege the
8 violation of a right secured by the Constitution and the laws of the United States, and must show
9 that the alleged deprivation was committed by a person acting under color of law.” *West v.*
10 *Atkins*, 487 U.S. 42, 48-49 (1988). A person acts under “color of law” if he “exercise[s] power
11 possessed by virtue of state law and made possible only because the wrongdoer is clothed with
12 the authority of state law.” *Id.*

13 Although Plaintiff appears to claim false arrest or imprisonment, he references actions in
14 California and is currently a resident of California. Moreover, he has not alleged sufficient
15 allegations to support finding that municipal liability is appropriate here. Plaintiff will be given
16 leave to amend and should include specific factual allegations setting forth each claim, against each
17 defendant, in order for the Court to determine if his claims are able to survive screening.

18 **III. Conclusion**

19 Accordingly, **IT IS ORDERED** that:

- 20 1. Plaintiff’s request to proceed *in forma pauperis* (ECF No. 6) is **GRANTED**. Plaintiff
21 shall not be required to pre-pay the filing fee of four hundred dollars (\$400.00). Plaintiff
22 is permitted to maintain this action to conclusion without the necessity of prepayment
23 of any additional fees or costs or the giving of a security therefor. This order granting
24 leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of
25 subpoenas at government expense.
- 26 2. The Clerk’s Office is **INSTRUCTED** to file Plaintiff’s complaint (ECF No. 1-1) on the
27 docket.
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1 3. The complaint is **DISMISSED WITHOUT PREJUDICE** providing Plaintiff with
2 leave to amend. Plaintiff will have until **May 6, 2020**, to file an amended complaint, if
3 the noted deficiencies can be corrected. If Plaintiff chooses to amend the complaint,
4 Plaintiff is informed that the Court cannot refer to a prior pleading (i.e., the original
5 complaint) in order to make the amended complaint complete. This is because, as a
6 general rule, an amended complaint supersedes the original complaint. Local Rule 15-
7 1(a) requires that an amended complaint be complete in itself without reference to any
8 prior pleading. Once a plaintiff files an amended complaint, the original complaint no
9 longer serves any function in the case. Therefore, in an amended complaint, as in an
10 original complaint, each claim and the involvement of each Defendant must be
11 sufficiently alleged.

12 4. **Failure to comply with this order will result in the recommended dismissal of this**
13 **case.**

14 5. Plaintiff's Motion for Relief (ECF No. 7) is **denied**.

15 IT IS SO ORDERED.

16 DATED: April 6, 2020.



DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE